RHB-Cathay Securities Pte Ltd v Lim Bee Keong

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO R1–24–51 OF 1997
KC VOHRAH J
25 MAY 1999

Civil Procedure *— Time — Extention of time — Application to set aside order for registration of foreign judgment — Whether there was delay — Whether defendant has been candid about the delay and his conduct has been bona fide*

The plaintiff obtained formal judgment against the defendant in the High Court in the Republic of Singapore on 24 June 1997. On 15 October 1997, the senior assistant registrar ('the SAR') in the Kuala Lumpur High Court ordered the judgment to be registered under the Reciprocal and Enforcement of Judgment Act 1958. An order for the substituted service of the order was made and substituted service of the order was effected on 19 January 1998. The defendant alleged that he was not aware of the order until 6 March 1998 when he was so informed by his solicitors. On 24 June 1998, the defendant applied for extension of time to set aside the order for the registration of the foreign judgment. The SAR held that the defendant had failed to give sufficient reasons for the delay in filing the application to set aside the order. The defendant appealed.

Held, dismissing the appeal:

(1) The substituted service effected by the plaintiff is deemed to be sufficient and effective against the defendant upon the expiry of 14 days from the last date of service (19 January 1998). Thus, the last day for the defendant to make application to set aside the order for the registration of the foreign judgment was 2 February 1998 but the application was only made on 6 March 1998, after a lapse of 32 days (see p 644 B–D).

(2) Although the previous solicitors for the defendant had asked for the cause papers and they were supplied the same on 12 February 1998, the application to set aside the order obtained under the originating summons was filed only on 6 March 1998, about three weeks later and there is no explanation given for the further period of delay (see p 644 H–I).

(3) The defendant has not been candid about the delay and there is every reason to say that his conduct has not been bona fide. Therefore, the discretion was properly exercised and the court cannot interfere with his decision in dismissing the application for extension of time (see p 645 F–G).

[Bahasa Malaysia summary

Plaintif telah memperolehi penghakiman formal terhadap defendan di dalam Mahkamah Tinggi di Republik Singapura pada 24 Jun 1997.

Pada 15 Oktober 1997, penolong kanan pendaftar ('PKP tersebut') di Mahkamah Tinggi Kuala Lumpur telah memerintahkan supaya penghakiman tersebut didaftarkan di bawah Akta Penguatkuasaan dan Salingan Hukuman 1958. Suatu perintah untuk penyampaian ganti perintah tersebut telah dibuat dan penyampaian ganti perintah tersebut telah dilaksanakan pada 19 Januari 1998. Defendan mengatakan bahawa beliau tidak menyedari tentang perintah tersebut sehingga 6 Mac 1998 apabila diberitahu oleh peguamcara beliau. Pada 24 Jun 1998, defendan memohon untuk lanjutan masa untuk mengketepikan perintah untuk pendaftaran penghakiman asing tersebut. PKP tersebut memutuskan bahawa defendan telah gagal memberikan alasan-alasan yang mencukupi berkenaan dengan kelewatan dalam memfailkan permohonan untuk mengketepikan perintah itu. Defendan merayu.

Diputuskan, menolak rayuan:

(1) Penyampaian ganti yang dilaksanakan oleh plaintif adalah disifatkan sebagai mencukupi dan efektif terhadap defendan apabila tamat tempoh 14 hari dari tarikh terakhir penyampaian (19 Januari 1998). Maka, hari terakhir bagi defendan untuk membuat permohonan mengketepikan perintah untuk pendaftaran penghakiman asing tersebut adalah pada 2 Februari 1998 tetapi permohonan tersebut hanya dibuat pada 6 Mac 1998, selepas selang 32 hari (lihat ms 644 B–D).

(2) Walaupun peguamcara terdahulu bagi defendan telah meminta untuk dokumen-dokumen guaman dan telah dibekalkan dengannya pada 12 Februari 1998, permohonan untuk mengketepikan perintah tersebut yang diperolehi di bawah samam pemula hanya difailkan pada 6 Mac 1998, lebih kurang tiga minggu kemudiannya dan tiada sebarang penjelasan yang diberikan untuk tempoh kelewatan tambahan itu (lihat ms 644 H–I).

(3) Defendan telah tidak berterus-terang berkenaan dengan kelewatan itu dan memang wujud alasan untuk mengatakan bahawa kelakuan beliau adalah tidak bona fide. Maka, budi bicara tersebut telah dijalankan dengan betul dan mahkamah tidak boleh campur tangan terhadap keputusan beliau dalam menolak permohonan untuk lanjutan masa (lihat ms 645 F–G).]

Notes

For cases on extention of time, see 2(2) *Mallal's Digest* (4th Ed, 1998 Reissue) paras 4857–4877.

Cases referred to

Ban Huat Seng Co Ltd v Lee Poh Soo [1967] 1 MLJ 145 (refd)

Legislation referred to

Reciprocal and Enforcement of Judgment Act 1958
Practice Note No 1 of 1968

Hamid Sultan (*Hamid Sultan & Rakan-Rakan*) for the appellant/defendant.

Brenda Chong (*Lee Ong & Kandiah*) for the respondent/plaintiff.

Cur Adv Vult

KC Vohrah J: The appeal of the defendant in this case (encl 17) filed on 24 June 1998 is couched in the following terms: 'The defendant appeals against the decision of the senior assistant registrar ('the SAR') given on 24 June 1998 dismissing with costs the defendant's application to set aside the registered judgment entered on 15 October 1997'.

In fact, the SAR dismissed, firstly, an application for extension of time and secondly, an application to set aside the registered judgment.

It has to be pointed out that when the defendant filed his summons-in-chambers on 18 March 1998 for hearing before the SAR, there were three prayers requested for, ie:

(a) Defendan diberi kebenaran untuk membuat permohonan ini di luar aturan.

[The defendant be given leave to make this application outside the rules.]

(b) Pendaftaran penghakiman pada 15 Oktober 1997 diketepikan dan/atau dibatalkan.

[The registered judgment on 15 October 1997 be set aside/or dismissed.]

(c) Kos pemohon ini adalah kos dalam kuasa.

[The costs of this application be costs in the cause.]

In this summons-in-chambers, prayer (a) is a vague prayer but the SAR, in his grounds, and I agree with him, treated it as an application for extension of time to file the application in prayer (b), an application to set aside the order for the registration of a foreign judgment.

The SAR gave a short written decision on 24 June 1998 dismissing the application in prayer (a) and the application in prayer (b).

Although there is no appeal against the SAR's dismissal of prayer (a), I would have to deal with it as that has to be decided first before the issue on the second prayer can arise.

In regard to prayer (a), in relation to the application for extension of time to file the other application to set aside the order for registration of the foreign judgment, the SAR stated that the defendant had failed to give sufficient reasons for the delay in filing the application to set aside the order. I agree that the defendant should not be allowed extension of time to file the other application.

It is necessary to set out the salient features of the matter.

In the High Court in the Republic of Singapore, formal judgment was obtained on 24 June 1997 in Suit No 2240 of 1996 by the plaintiff against the defendant for RM265,794.01, the sum being the outstanding sum

owing to the plaintiff who acted as stockbrokers for the defendant for the purchase and sale of stocks in the Stock Exchange of Singapore and for interest of RM6,799.47 on this outstanding sum.

On 15 October 1997 in the High Court, Kuala Lumpur, this judgment was ordered to be registered under the Reciprocal and Enforcement of Judgment Act 1958 by the SAR.

It was not possible to serve the court order for registration. An order for the substituted service of the said order was made and accordingly substituted service of the order was effected wherein the last date of service was carried out on 19 January 1998. Pursuant to the order for substituted service, the substituted service effected by the plaintiff is deemed to be sufficient and effective against the defendant upon the expiry of 14 days from the last date of service (19 January 1998).

The last day for the defendant to make application, to set aside the order for the registration of the foreign judgment consequently was 2 February 1998 but the application was only made on 6 March 1998, after a lapse of 32 days.

In regard to the delay in filing the application the defendant did not dispute that the substituted service of the order was effected on 19 January 1998 by way of an advertisement in a newspapers but he said he was not aware of the order until 12 February 1998 when he was informed by his solicitors of a letter from the solicitors of the plaintiff. That letter, exhibited as 'A' to his affidavit (encl 9), referred to a sealed copy of the Singapore judgment and stated that the said judgment had been registered in the Kuala Lumpur High Court and that the solicitors had commenced execution against the defendant by filing a bankruptcy notice on 9 February 1998. Following from the letter, the defendant added, his solicitors wrote to the plaintiff's solicitors on 18 February 1998 to obtain particulars of the notice of the registration of the said judgment for the purpose of making the application.

The executive director of the plaintiff, in an affidavit (encl 13) affirmed on 25 March 1998, refuted the assertion of the defendant that he was not aware of the order until 12 February 1998 when he was informed by his solicitors of the registration of the foreign judgment. A letter from the defendant's solicitors (exh EC7) is attached to the deponent's affidavit and it shows that it is dated 6 February 1998 and the contents clearly show that the defendant was already aware of this originating summons. The defendant was obviously aware of the case against him for him to retain counsel but he did not candidly disclose when he became aware of the matter. It is true that the previous solicitors for the defendant had asked for the cause papers and they were supplied the same on 12 February 1998 but the application to set aside the order obtained under the originating summons was filed only on 6 March 1998, about three weeks later and there is no explanation given for the further period of delay.

I would like to add this further observation. It will be noticed that in all the affidavits (see encls 14 and 17) deposed to by defendant, the defendant's address is shown as No 4, Jalan 16/14, 46350 Petaling Jaya. This was the same address at which the plaintiff had attempted to serve the order for the registration of the judgment of High Court of the Republic of

A Singapore but to no avail (see the affidavit of Subramaniam a/l Veloo, encl 6, supporting an application for substituted service). Practice Note No 1 of 1968 relating to the practice governing applications for substituted service on the High Court Malaya states:

1 Two calls should be made;

B 2 The calls should be made at the defendant's residence, permanent or temporary, if known; ...

3 ...

4 ...

5 The second call should be made by appointment by letter to the

C defendant by ordinary prepaid letter post, giving not less than two clear days' notice, enclosing a copy of the document to be served, and offering an opportunity of making a different appointment;

6 ...

7 ...

D The affidavit of Subramaniam s/o Veloo shows that the requirement in para 5 of the Practice Note was followed and the letter of the solicitors was addressed to the defendant at the same address given in defendant's affidavits. When the process server went to the house at the date and time appointed in the letter, he was told that the defendant was not at the house.

E Whatever may have been the reason for the defendant for not appearing in the appointed date — 15 November 1997 — the defendant was certainly aware of the prepaid letter that the plaintiff had sent him together with the order for the registration of the Singapore judgment and it certainly shows, too, that he was aware of the order of the registration of the foreign judgment made on 15 October 1997 and that he ignored it cavalierly.

F Counsel for the defendant had argued that there was no inordinate delay but the issue is not just delay alone. It is quite clear that the defendant has not been candid about the delay and there is every reason to say that his conduct has not been bona fide (see *Ban Huat Seng Co Ltd v Lee Poh Soo* [1967] 1 MLJ 145).

G Thus, I agree with the SAR's view that no sufficient reasons have been given for the delay in filing the application for extension of time. The discretion was properly exercised and I cannot interfere with his decision in dismissing the application for extension of time.

The SAR having rejected the application for extension of time, he should not have gone on to consider the other application. The other

H application did not arise to be considered as the order rejecting the application for extension of time meant that the other application could not be made. And it is for this reason I did not consider the other application. Accordingly, I dismissed the appeal solely on the ground that the SAR was not wrong in dismissing the application of the defendant to make the application out of time.

I

Appeal dismissed.

Reported by Loo Lai Mee